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EEOC v. T.S.S.O., Inc., d/b/a Applebee's

Judge Roger Vinson

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EEOC v. T.S.S.O., Inc., d/b/a Applebee's

Keywords

EEOC, T.S.S.O Inc., Applebee's, 3:99CV512/RV, Consent Decree, Disparate Treatment, Hiring, Race, Black, Service, Employment Law, Title VII

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

CIVIL ACTION NO.
3:99CV512/RV

T. S. S. O., INC., d/b/a Applebee's

Defendant.

CONSENT DECREE

1. This Consent Decree ("the Decree") is made and entered into by and between Plaintiff, the Equal Employment Opportunity Commission ("the Commission" or "EEOC") and Defendant T. S. S. O., Inc., d/b/a Applebee's ("Defendant" or "T.S.S.O."). The Commission and T.S.S.O. are collectively referred to herein as "the Parties".

2. On December 22, 1999, EEOC initiated this action by filing its Complaint against Defendant, alleging that T.S.S.O. failed to hire Hope Williams, and other similarly situated individuals, for the position of Server at T.S.S.O.'s Pensacola, Florida, facility, because of their race, Black, in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), and Title I of the Civil Rights Act of 1991. The Complaint arose out of allegations in an EEOC charge filed by Hope Williams ("Williams") against Defendant in EEOC Charge Number 151-97-1537.

OFFICE OF CLERK
U.S. DISTRICT CT.
NORTHERN DIST. FLA.
PENSACOLA, FLA.
01 AUG 14 AM 9:50

for
Reed

OFFICE OF CLERK
U.S. DISTRICT CT.
NORTHERN DIST. FLA.
PENSACOLA, FLA.

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Bullespie, Serralta,
Hall, Kilpatrick, Sands
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FILED

3. In the interest of resolving this matter, to avoid the costs of litigation, and as a result of having engaged in extensive settlement negotiations, the Parties have agreed that this action should be finally resolved by the entry of this Decree. Nothing herein shall be deemed to be an admission by T.S.S.O. that it has at any time, place or in any manner whatsoever violated Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et. seq. (Title VII) or that it has violated any other state or federal law or that it has violated any other theory of liability raised in the lawsuits or demands of any of the parties. This Decree shall be final and binding on the parties and their successors and assigns.

4. The Parties agree that this Decree resolves all claims against T.S.S.O. arising out of EEOC Charge Number 151-97-1537, and the Complaint filed in this action, and constitutes a complete resolution of all claims that were made by the Commission against T.S.S.O. in this action. Upon execution of this Decree and in accordance with paragraph 24 hereof, the complaint styled Equal Employment Opportunity Commission v. T.S.S.O., Inc., Civil Action No. 3:99CV512/RV will be dismissed with prejudice and the referenced EEOC charge closed. The Parties further agree that this Decree does not resolve any Charges of Discrimination that may be pending with the EEOC, other than the Charge referred to in this paragraph.

5. This Decree constitutes the complete agreement between the EEOC and Defendant with respect to the matters referred to herein. No representations or inducements to compromise this action have been made, other than those recited or referenced in this Decree. No waiver, modification or amendment of any provision of

this Decree shall be effective unless made in writing, approved by all parties to this Decree and approved or ordered by the Court.

NOW, THEREFORE, the Court having carefully examined the terms and provisions of this Consent Decree, and based on the pleadings filed by the parties, it is **ORDERED, ADJUDGED AND DECREED THAT:**

GENERAL INJUNCTIVE PROVISIONS

6. Defendant, its officers, managers, employees, agents and partners, are enjoined from engaging in any unlawful employment practices based on race. Defendant will not condone any discriminatory practices engaged in by its employees, and will take prompt and effective remedial or disciplinary action when it becomes aware of any such employee conduct.

7. Defendant, its officers, managers, employees, agents and partners, are enjoined from discriminating against any individual who opposes any of Defendant's practices which the employee believes to be a violation of Title VII; or who files a charge of discrimination with the EEOC alleging violation(s) of such statute; who cooperates with the EEOC in the investigation and/or prosecution of any charge of discrimination; or who cooperated in the investigation or prosecution of this case.

DISTRIBUTION OF ANTI-DISCRIMINATION POLICIES AND POSTING

8. Defendant has established written policies of compliance with Title VII of the Civil Rights Act of 1964, including policies involving unlawful employment practices on the basis of race, along with internal complaint procedures. The policy will be posted at Defendant's restaurant located at Nine Mile Road in Pensacola, Florida, (the "Nine

Mile restaurant”) within thirty (30) days of the effective date of this Consent Decree. All new hires of Defendant at the Nine Mile restaurant during the term of this Decree shall be given within one week of their commencement of employment a copy of the Defendant’s anti-discrimination policy. Additionally, Defendant agrees to post at the Nine Mile restaurant for the duration of this Decree a copy of the notice attached hereto as Exhibit A.

TRAINING

9. In order to further ensure the effective implementation of anti-discrimination policies, Defendant will conduct annual training sessions for the duration of the Decree for all its managers, supervisory personnel, and employees at Defendant’s Nine Mile restaurant on all aspects of Title VII, especially on the requirements of Title VII as it relates to unlawful employment practices on the basis of race. Each employee training session shall last at least two hours in time. The first training session will take place no later than January 31, 2002. Defendant agrees that within thirty (30) days after a training session, it will provide the EEOC with a list of the names and job titles of the individuals in attendance at the training session, the specific subject(s) discussed, and the date of the training session. Defendant will pay for the trainer, his/her preparation time, and all materials incident to the training.

RECRUITING AND HIRING

10. When recruiting for Server positions at the Nine Mile restaurant outside of the current T.S.S.O. workforce, in addition to the sources from which the Defendant currently receives or may receive referrals, T.S.S.O. will advertise for any vacancies in

widely-read local area newspapers, including the New American Press and the Pensacola Voice. T.S.S.O. will document its recruitment efforts and maintain all records pertaining thereto, including employment applications, for the duration of this Decree.

11. T.S.S.O. will establish a formal hiring process at the Nine Mile restaurant that ensures its interviewing, selection and hiring shall be based upon criteria to include prior experience, background, and education. Provided there are open positions, all persons interested in applying for an open position with Defendant shall be permitted to do so by employment application. Upon receipt of the completed employment application, Defendant, through its authorized representatives, shall evaluate and, if necessary, interview the applicant, prior to the hiring decision. Defendant will maintain a record for each applicant specifically describing the actions it took with respect to each person and the reasons for selection or non-selection.

MONITORING

12. T.S.S.O. will retain all employment records, including applications for employment and personnel forms, for the duration of this Decree.

13. T.S.S.O. agrees to provide the EEOC with certification that it conducted the training referenced in paragraph 9 within fourteen (14) days after each individual session occurs.

14. The Defendant shall submit for the EEOC's inspection a report identifying by name and address of each black applicant for the position of server at the Nine Mile restaurant and each individual hired for the position of server at the Nine Mile restaurant during the calendar years 2002 and 2003. Defendant shall also include in said report a list of any employee or applicant at the Nine Mile restaurant who makes to Defendant a

complaint of racial discrimination on the part of Defendant. The report for calendar year 2002 shall be submitted to the EEOC on or before January 31, 2003; the report for calendar year 2003 shall be submitted to the EEOC on or before January 31, 2004.

15. Defendant will appoint one individual who shall be responsible for coordinating its compliance with this Consent Decree. All documents and certifications required to be delivered by T.S.S.O to the EEOC shall be mailed to: Gedety Serralta, Esq. and Kenneth Gillespie, Esq., Trial Attorneys, Equal Employment Opportunity Commission, One Biscayne Tower, Suite 2700, Two South Biscayne Blvd., Miami, Florida 33131.

16. The EEOC shall have the opportunity to interview the individual appointed to coordinate Defendant's compliance with this Consent Decree. Interviews may be conducted during normal business hours to the extent such interviews do not interfere with Defendant's usual business operations.

17. Upon ten (10) days written notice, Plaintiff shall have the right to enter upon the premises of the Nine Mile restaurant for the purpose of inspecting and copying any of Defendant's records required to be maintained by this Decree.

MONETARY RELIEF

18. The Parties agree that Defendant T.S.S.O. will pay the sum of \$95,000.00 to be divided among Charging Party, Hope Williams, and similarly situated individuals including Samuel Fulton. The monies will be dispersed as follows: \$90,000 to Hope Williams and \$5,000 to Samuel Fulton, Jr., less withholding of appropriate amounts for federal state and local income tax and social security withholding. T.S.S.O. shall issue forms W-2 with respect to these payments. T.S.S.O. shall be responsible for

the employer's share of any federal, state or local income taxes, and social security withholdings; Williams and Fulton will be responsible for all other taxes. All payments shall issue within thirty (30) days from the Court's execution of this Decree, and shall be made by certified check payable to Hope Williams and Samuel Fulton, forwarded to their addresses at 927B Bremen Avenue, Pensacola, Florida 32506 and 6503 Hampton Road, Pensacola, Florida 32505, respectively, by certified mail with a return receipt requested. Contemporaneously with the mailing of said payments, Defendant will submit to the EEOC a copy of the correspondence and checks mailed to the individuals identified above.

19. If the Defendant fails to tender payment or fails to perform timely, the Defendant shall:

- (a) pay interest at the rate calculated pursuant to 26 U.S.C. Section 6621 (b) on any untimely or unpaid amounts, and
- (b) bear any additional costs incurred by the Plaintiff caused by the non-compliance or delay of the Defendant.

ENFORCEMENT OF DECREE

20. Either party shall have independent authority to seek the judicial enforcement of any aspect, term or provision of this Decree.

COSTS

21. Each Party shall bear its own costs and attorneys' fees associated with this litigation.

COMMENCEMENT AND DURATION OF CONSENT DECREE

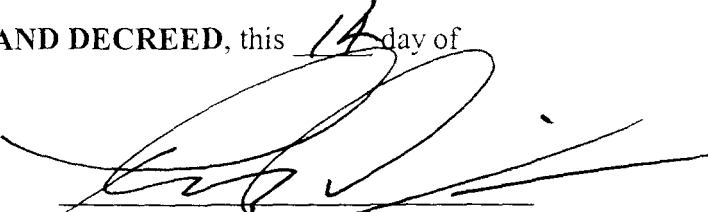
22. The obligations imposed by this Decree shall take effect no sooner than the date six (6) months after the date of entry of the Decree, provided, however, that the monetary relief described in paragraph 18 shall be payable as set forth therein.

23. This Decree shall be in effect and binding on the parties up to and including December 31, 2003. This Decree shall terminate, dissolve, and be of no effect as of January 1, 2004; provided, however, that the report for the year 2003 referenced in paragraph 14 hereof shall be submitted on or before January 31, 2004, as called for therein.

24. This case is hereby dismissed with prejudice. The Court will retain jurisdiction to enforce this Consent Decree during the period that said Decree is in effect.

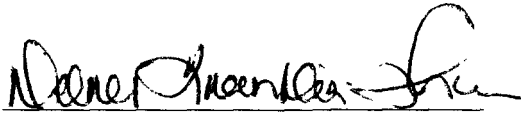
SO ORDERED, ADJUDGED AND DECREED, this 14 day of

August, 2001.



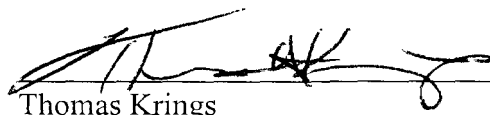
ROGER VINSON
UNITED STATES DISTRICT JUDGE

AGREED TO:
FOR THE PLAINTIFF,
UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

By: 
Delner Franklin-Thomas, Esq.
Regional Attorney
U.S. Equal Employment Opportunity Commission
Miami District Office
One Biscayne Tower, Suite 2700
2 South Biscayne Boulevard
Miami, Florida 33131

Date: 8-10-01

AGREED TO:
FOR THE DEFENDANT,
T. S. S. O., INC.

By: 
Thomas Krings
Vice President of Operations
T.S.S.O., Inc.
5300 Oakbrook Parkway
Suite 135
Norcross, GA 30093

Date: 7/25/01

EXHIBIT "A"
NOTICE TO ALL EMPLOYEES

POSTED PURSUANT TO A DECREE OF THE
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA, PENSACOLA DIVISION

This notice is being posted pursuant to a Consent Decree in EEOC v. T.S.S.O., d/b/a Applebee's, Case No.: 3:99CV512/RV in the Northern District of Florida. In accordance with its obligations under law, T.S.S.O. agrees that it will not discriminate against employees in violation of Title VII of the Civil Rights Act of 1964, as amended ("Title VII"). Title VII protects individuals from racial discrimination in all aspects of their employment, including hiring, promotions and discharge.

Under Section 703 of Title VII of the Civil Rights Act of 1964, as amended:

It shall be an unlawful employment practice of an employer:

(1) to fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to their compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; and/or (2) to limit, segregate, or classify its employees or applicants for employment in any way which would deprive or tend to deprive the employee of employment opportunities or otherwise adversely affect the employee's status because of the employee's race, color, religion, sex, or national origin.

T.S.S.O. assures its employees that it supports Title VII, and that it will not take any action against an individual because he/she has exercised his/her rights under the law to oppose discriminatory acts or to file charges with the EEOC.

This notice shall remain posted through December 31, 2003. Employees or applicants for employment who have questions about their rights under Title VII, or any other federal anti-discrimination law, may telephone the Miami District Office of the Equal Employment Opportunity Commission at 1-800-669-4000 or (305) 530-6001.

Signed this _____ day of _____, 2001.

Chief Executive Officer
T.S.S.O., Inc.